

Errera
10/634,438

REMARKS

Allowance of claims 25 and 26 is acknowledged.

Claim 24 was objected to as being dependent upon a rejected base claim, but the Examiner indicated this claim would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, claim 24 would be canceled and replaced by a new claim 27 which incorporates all of the limitations of claim 24 and its parent claim.

Claims 1-4, 9-13, 15, 17 and 19-22 were rejected as being anticipated by Swapp.

Swapp has a layout tool for use "by carpenters, builders, contractors, tradesmen and the like to print several commonly used layout mark combinations in a series when the tool is rolled along a surface, such as those used for rafters, joists, studs, flooring, roofing, paneling, etc." (see col. 1, lines 5-10, underlining added for emphasis). There is nothing in this reference which suggests the use of such a tool for embossing a food item. Independent claim 1, the parent claim for claims 2-24 (except, of course, for the canceled claims), clearly recites an "enhanced roller device ... in combination with a food product" and the body of the claim clearly refers to the food product as part of the combination. Therefore, the statement by the Examiner "In regards to the use of the device with a food product, such is intended use and provides no structural limitations to the claims" appears to be clearly in error.

In addition, as pointed out in the remarks of the previous amendment, Swapp's roller prints the markings on the identified items (using an ink pad, see col. 1, lines 59-62) as noted above whereas in the present invention the food item is embossed, producing "a raised design" or carving in relief, as pointed out in the previous amendment with regard to the dictionary definition discussed there. There is nothing in this reference to suggest that a raised design or carved impression is to be obtained. Clearly, the statement by the Examiner that Swapp discloses "an embossing roller" is in error.

In view of the foregoing, the rejection should be withdrawn.

Claims 7, 16 and 23 were rejected as being unpatentable over Swapp in view of Kuzyk.

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Kuzyk discloses a rolling pin with cutters spaced along its width for cutting the dough as it is rolled. The reference was cited for the use of a cutting blade. Since the purpose of printing marks on rafters and the like in the Swapp patent is merely for the benefit of workers to identify layout marks, it is not understood how the teachings of this patent can be combined with the teachings of Swapp.

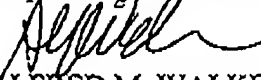
A new claim 28 is proposed to be added which differs over claim 1 before the present proposed amendment is entered to call for "a food product having a surface capable of being incused with a three dimensional pattern". Support for this limitation comes from within claim 1 itself which calls for the food product in the preamble and then refers back to the food product in the body of the claim. The reason for the additional language to clarify any possible lingering ambiguity in the mind of the Examiner that the food product is part of the combination being claimed (see the preamble, "in combination with a food product").

In view of the foregoing, it is requested that this amendment be entered as it does not involve any new issues and pass the case to issue.

The Examiner is requested to call the undersigned if further changes are required to obtain allowance of the application.

A favorable action is solicited.

Respectfully submitted,


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CERTIFICATE OF FAX TRANSMISSION

I certify that the aforementioned amendment was sent by fax to 571-273-8300 on the date indicated below:

May 10, 2007


Alfred M. Walker